



## **INTERNALLY DISPLACED PEOPLE (IDPs) AND INTERNATIONAL HUMANITARIAN LAW: THE VIABILITY OF ESTABLISHMENT OF SAFETY ZONES.**

Address by H.E. Prof. Dr. Kennedy Gastorn,\* Secretary-General of Asian-African Legal Consultative Organization (AALCO), at the Fifth Commonwealth Red Cross and Red Crescent Conference on International Humanitarian Law, on the Theme “*Celebrating the Geneva Conventions and Building Respect for IHL: A Commonwealth Perspective*”, at Kigali Convention Centre, Kimihurura, Kigali, Rwanda, 10-14 June, 2019.

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\* The views expressed in this paper are purely personal and do not constitute legal advice.

## Abstract

Today, Internally Displaced People (IDPs) are amongst the most vulnerable groups of persons as there is no universal, legally binding instrument that specifically addresses their plight. This is irrespective of the UN Guiding Principles on Internal Displacement of 1998, which remains as the only universally accepted international framework for the protection of IDPs. This is complemented by other regional instruments such as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa of 2009 (Kampala Convention), which entered into force on 6 December 2012, as the first-ever legally-binding regional instrument for the protection and assistance of IDPs.

Accordingly, IDPs are partly protected by a gamut of laws including international humanitarian law, refugee law, international human rights law, and of course, the national law of the State concerned. The present system is *ad hoc*, with no organization having a global mandate to protect and assist the internally displaced. There exists what can be called a “protection gap” that exists not only because of the sensitivity of the subject within the country concerned, but also various gaps within the international framework. Resultantly, the international law has not succeeded in effectively preventing internal displacement.

This address focuses on the category of conflict-induced displacements. This category include displacement caused by internal tensions and disturbances involving the use of force and other repressive measures but which fall short of armed conflict. Classically, IDPs are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.<sup>1</sup>

The choice of conflict induced IDPs is based on the fact that as early as 1985, the organization I head, AALCO, on the proposal by the Kingdom of Thailand, had taken up the subject of ‘establishing safety zones for the IDPs in their country of origin’, partly as a way to lessen the burden upon the international community under the broader principle of burden sharing, and in the context of the Bangkok Principles of 1966.<sup>2</sup> The idea of Safety Zones, however, is not a novel concept as such, and finds its origins in IHL such as the 1949 Geneva Conventions.

As far-fetched as the idea may have been for those times, the present time, and in particular 2019, is ripe for a revival and further work on this idea as one of the tools towards the protection of IDPs.

It is the 70<sup>th</sup> anniversary of the Geneva Conventions; it is the 10<sup>th</sup> anniversary of the Kampala Convention; the African continent, which hosts over 14.5 million internally displaced persons (IDPs), [the AU] has declared the 2019 as the year of “*Refugees, Returnees and Internally Displaced Persons: Towards Durable Solutions to Forced Displacement in Africa*”. More importantly, there is only ‘one year’ left for materializing the African Union Vision 2020 of

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<sup>1</sup> Article 1 of AFRICAN UNION CONVENTION FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS IN AFRICA 2009 (KAMPALA CONVENTION).

<sup>2</sup> 26<sup>th</sup> AALCC Session, Bangkok.

“Silencing Guns by ending All Wars in Africa by 2020” within the ambit of AU Agenda 2063. This Vision 2020 was adopted by the AU Fifth High-Level Retreat on the Promotion of Peace, Security and Stability in Africa, hosted by the Government of the United Republic of Tanzania and held in Arusha, Tanzania, in October 2014.<sup>3</sup> It is unlikely that guns will be silenced in Africa by next year! This is without prejudice to the fact that much progress has been done in silencing the guns. In addition, within the context of SDG 16+ for Agenda 2030, some studies have indicated an increase in armed and violent conflicts. Globally, over 40 countries are in active conflict, and 92 countries have become less peaceful over the last 10 years. This has increased the IDPs but also causes 1.6 million deaths worldwide every year! At the same time, there is an increasing move to accredit military-security spending as a ‘progressive’ contribution to the SDG16+, despite the risks of undermining peace and development efforts. In fact, world military expenditure has increased to \$1,739 billion by 2017.<sup>4</sup>

The broad objective of this presentation is therefore to analyse and evaluate whether the present international protection regime of IDPs is actually being able to serve them, and further to examine the necessity for safe zones for IDPs, from the Afro-Asian views of AALCO.

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<sup>3</sup> The UN Security Council adopted resolution 2457 (2019) welcoming the African Union’s Vision 2020 - “Silencing the Guns in Africa by the Year 2020” initiative.

<sup>4</sup> Amplified Commitments and Partnerships for Accelerated Action: Rome Civil Society Declaration on SDG 16+ May 2019.

## **I. Introduction**

People have been uprooted by persecution in all ages. What is unique today is the massive scale of such movements, within and across national borders, based on the increased number of armed and conflicts situations coupled with systematic injustices. 40 countries, mainly in Africa and Asia, are in active conflict, and over 92 countries globally have become less peaceful over the last 10 years. Yet, unlike in the past, currently there is greater awareness and willingness on the majority of international community to address these atrocities.

Internally displaced people (IDPs), in the context of International Humanitarian Law (IHL) are those who have been forced or obliged to leave their homes behind, notably for reasons related to armed conflict or other violence, and who remain within the borders of their country. Therefore, IDPs have not crossed borders to find safety. They stay within their own country and remain under the protection of its government, even if that government is the reason for their displacement. They often move to areas where it is difficult for us to deliver humanitarian assistance and as a result, these people are among the most vulnerable in the world.

There is no universal, legally binding instrument equivalent to the 1951 Refugee Convention that specifically addresses their plight. Therefore, unlike refugees, IDPs are not the subject of a specific international convention. They are nevertheless protected, although not expressly, by various bodies of law, including, most notably, national law, human rights law and, if they are in a State affected by armed conflict, IHL. The UN Charter, especially the rules on use of force is also relevant to the IDPs. Additionally, the UN Guiding Principles on Internal Displacement provide useful guidance on displacement-specific aspects. They have broad support from the international community, and many States have incorporated them into domestic law. Many of the rules contained in the Guiding Principles are part and parcel of international human rights law and international humanitarian law. For example, the principles make clear that States have a duty to provide displaced people with lasting return, resettlement and reintegration solutions, and that displaced people must be involved in planning and managing measures that concern them.

Although the Principles are not a binding legal document, they have already gained, in a short time, standing and authority. They have been acknowledged by the UN and endorsed by the major international humanitarian and development organizations. They have begun to be used in the field as an advocacy tool by international organizations, regional bodies and NGOs. In Africa, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa of 2009 (Kampala Convention), which entered into force on 6 December 2012, was the first-ever legally-binding regional instrument for the protection and assistance of IDPs. In its Preamble, it recognizes the “the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of internally displaced persons”. Given the scale of problem in Africa, the Kampala Convention is a significant and necessary affirmation of existing rules of the International Humanitarian Law and International Human Rights Law, as well as a contribution to further development of the

protections afforded to IDPs.<sup>5</sup> It details the obligation of States, non-State armed groups, and International Organizations in preventing displacement and in protecting and assisting IDPs. The Kampala Convention provides a comprehensive framework that can guide African States in adopting domestic normative, policy and practical measures to deal with internal displacement in an effective manner.

At the institutional level, an array of international humanitarian, human rights and development organizations have come forward to offer protection, assistance, and development aid to IDPs. Nonetheless, no organization has a global mandate to protect and assist the internally displaced. As a result, the system is ad hoc: organizations basically pick and choose the situations in which they will become involved on the basis of mandates, resources or other considerations.

Neither the UNHCR, UNICEF nor the ICRC deal with all situations of internal displacement. The selectivity of the international system could be modified if there were an effective central point within the system to routinely and rapidly assign responsibilities to different agencies. But there is no such point, although for the first time there is a vigorous UN Emergency Relief Coordinator who is taking the plight of IDPs seriously and is trying to strengthen coordination among UN agencies.<sup>6</sup>

## **II ICRC and Internal Displacement**

Internal displacement is frequently the consequence of violations of IHL during armed conflict. When civilians flee a conflict zone, this is a good indication that the warring parties are indifferent to their protection or, worse, are deliberately targeting them. It is expected that every effort is made to prevent such displacement. Wherever IDPs find themselves and whatever the reason for their displacement, they remain, in situation of armed conflict and other situations of violence, first and foremost civilians and, as such, are entitled to every protection afforded that category of individuals under IHL.

The role of the International Committee of the Red Cross (ICRC) is to protect and assist persons affected by armed conflict and other situations of violence. To that end, the ICRC takes direct and immediate action in response to emergency situations, while at the same time promoting preventive measures, such as the dissemination of IHL and its incorporation into national legislations. IDPs have, therefore, always been major beneficiaries of ICRC activities.<sup>7</sup>

Under IHL, people are protected from and during displacement as civilians, provided they do not take a direct part in hostilities. IHL plays an important part in preventing displacement in the first place. It prohibits the displacement of people except if it is necessary for imperative

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<sup>5</sup> Notably, the Kampala Convention goes beyond IHL rules in some respects, for example, in its provisions on safe and voluntary return and on access to compensation or other forms of reparations. See 'Internally Displaced Persons and International Humanitarian Law', ICRC Advisory Service on International Humanitarian Law, (2017), 2.

<sup>6</sup> Roberta Cohen, 'New Challenges for Refugee Policy: Internally Displaced Persons' Brookings (1999).

<sup>7</sup> ICRC Position on Internally Displaced Persons (IDPs), (ICRC, 2006) <[https://www.icrc.org/en/doc/assets/files/other/2006\\_idps\\_en\\_icrcexternalposition.pdf](https://www.icrc.org/en/doc/assets/files/other/2006_idps_en_icrcexternalposition.pdf)>

military reasons or the protection of the civilians themselves. A widespread or systematic policy of displacement of civilians without such justification constitutes a crime against humanity. There are many other rules of IHL, notably those governing the conduct of hostilities, that are crucial to protect the civilian population and whose violations often triggers displacement. Like other rules of IHL that can prevent displacement from occurring in the first place, this prohibition also protects civilians against the risk of secondary displacement. Furthermore, IDPs have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist (IV Geneva Convention Art. 49 and Customary International Humanitarian Law Rule 132).

Apart from this, the IHL rules contained in Geneva Conventions III and IV, Additional Protocols I and II, and Customary International Humanitarian Law provide explicit norms for ensuring respect for life, dignity and humane treatment of IDPs, adequate standards of living and humanitarian assistance for them, respect for family life and family unity, ensuring proper documentation for IDPs, protection of their objects and property as civilians, ensuring their employment, economic activities and social security, access to education for children, and prohibition of forcible recruitment of children and their use in hostilities.<sup>8</sup>

It is, however, important to note here that there is no legally binding definition of an "internally displaced person." Nor does the ICRC have its own or a universally agreed definition. Similarly, there is no definition of the end of displacement and there are no commonly agreed criteria for determining when a person ceases to be an IDP.<sup>9</sup>

While they are displaced, IDPs are entitled to the same protection from the effects of hostilities and the same relief as the rest of the civilian population. Return is only expressly addressed by IHL in the context of evacuations. In such cases, displaced people needs to be transferred back to their homes as soon as hostilities in the area have ceased. A right of return can arguably be inferred a [*fortiori*] or a stronger reason following unlawful displacement.<sup>10</sup>

The ICRC's overall objective is to alleviate the suffering of people who in armed conflict and other situations of violence. To that end, the organization strives to provide effective and efficient assistance and protection for such persons, be they displaced or not, while taking into consideration the action of other humanitarian organizations.<sup>11</sup> ICRC's assistance to IDPs can include distributing relief supplies (such as food, water and essential house-hold items), and providing shelter, and hygiene and health care programs. States have an obligation to adopt and apply domestic measures to implement IHL, including with respect to IDPs. The ICRC, through its Advisory Service on IHL, provides States, upon their request, with assistance and advice on their obligations to implement IHL at the national level.<sup>12</sup>

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<sup>8</sup> For a comprehensive and concise account of protection of IDPs under IHL see 'Internally Displaced Persons and International Humanitarian Law', ICRC Advisory Service on International Humanitarian Law, (2017), 2.

<sup>9</sup> ICRC Position on Internally Displaced Persons (IDPs), (ICRC, 2006) <[https://www.icrc.org/en/doc/assets/files/other/2006\\_idps\\_en\\_icrcexternalposition.pdf](https://www.icrc.org/en/doc/assets/files/other/2006_idps_en_icrcexternalposition.pdf)>

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> For domestic implementation of IHL see 'The Domestic Implementation of International Law: A Manual', ICRC, 2015.

### III UNHCR and Internal Displacement

IDPs, since they have not crossed a border, have no assured source of protection and assistance as refugees. The international refugee regime, a complex network of institutions, laws and agreements set up after the Second World War, had as its aim the protection of people forced to seek asylum on the territory of a foreign State. The UN High Commissioner for Refugees (UNHCR) and the UN Convention on Refugees of 1951 sought to protect persons outside their country of origin. Excluded from this arrangement, in keeping with traditional notions of sovereignty, were those forced from their homes who remained under the jurisdiction of their own governments. It was expected that their governments would provide for their well-being and security. In fact, when governments failed to do so, or deliberately subjected their displaced populations to starvation and other abuses, the international community basically stood by.

This gap in the international protection system has become more evident in recent years. For one, the increase in internal conflicts produced growing numbers of internally displaced people.

In 1992, the UN Secretary-General appointed a Representative on Internally Displaced People, Francis M. Deng of the Brookings Institution, to grapple with these issues. Deng found the doctrine of “sovereignty as responsibility” the most suitable conceptual framework for dealing with internal displacement. Sometimes called the “Brookings doctrine”, it says that States have primary responsibility for the security and well-being of their populations. If they are unable to provide protection and life-supporting assistance, they are expected to request and accept outside offers of aid. Should they refuse or deliberately obstruct access, they can no longer claim the prerogatives of sovereignty; the international community must become involved.<sup>13</sup>

The UNHCR believes that the prevention of displacement and the protection of IDPs and other affected populations within their own country are the responsibility of national authorities. However, and particularly in situations of armed conflict IDPs may find themselves over territories where State authority is absent or difficult to enforce. In such situations the prevention of displacement and the protection of IDPs is also the responsibility of non-State actors. The UNHCR has identified the “protection gap” that exists not only because of the sensitivity of the subject within the country concerned, but also various gaps within the international framework. In its “cluster approach”, the UNHCR has identified the “protection gap”, and created institutional mechanism to ensure that protection is a core component and a cross-cutting element of humanitarian response. The UNHCR further maintains that although the critical test of any humanitarian response is what happens on the ground, until now there has been no comprehensive and practical guidance on how to operationalize protection in situations of internal displacement.<sup>14</sup>

It is fair to note that the concepts of safety zone in refugee law is relatively more recent compared to the parallel concepts such as *‘hospital and safety zones’*, *‘neutralized zones’*,

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<sup>13</sup> A set of Guiding Principles on Internal Displacement was introduced into the United Nations in 1998 by Mr. Francis M. Deng.

<sup>14</sup> UNHCR Handbook for the Protection of Internally Displaced Persons (March, 2010).

and ‘*demilitarized zones*’ under humanitarian law. All these concepts serve the same purpose of protecting and assisting persons affected by violent conflicts. In addition, in practice, depending upon the nature and extent of the conflict, the above concepts often overlap.<sup>15</sup>

#### **IV Human Rights Law and Internal Displacement**

IDPs are entitled to enjoy equally, and without discrimination, the same rights and freedoms under international and national law as do other persons in their country. As citizens or habitual residents of their countries, IDPs remain entitled to full and equal protection under the State’s national law, which should be compatible with the State’s obligations under international law. The challenge for international agencies, NGOs and States has been to identify the rights and guarantees dispersed in the rich body of international law that respond to the particular needs and protection risks that arise during displacement.

International Human Rights Law, which consists of both customary and treaty law, the latter as broadly contained in key human rights instruments such as the Universal Declaration on Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, obliges States to respect, protect and fulfil human rights of all persons without discrimination of any kind, such as age, gender etc., including on the grounds of having been internally displaced. It is important, therefore, to note that although none of the international human rights instruments address internal displacement, they do cover a range of risks that IDPs often face and re-inforce protection for particular persons who tend to be disproportionately affected by displacement.

#### **V UN Guiding Principles on Internal Displacement**

In 1998, the Representative of the UN Secretary-General on Internally Displaced People, Mr. Francis M. Deng, submitted the Guiding Principles on Internal Displacement to the then UN Commission on Human Rights. These Principles, although not a binding legal instrument, have since gained considerable authority. The Heads of States and Governments assembling in New York for the September 2005 World Summit unanimously recognized them as an “important international framework for the protection of internally displaced persons”,<sup>16</sup> and the General Assembly has not only welcomed “the fact that an increasing number of States, United Nations agencies and regional and non-governmental organisations are applying them as a standard” but also encouraged “all relevant actors to make use of the Guiding Principles when dealing with situations of internal displacement”.<sup>17</sup>

At the regional level, the Organization of African Unity (now the African Union) formally acknowledged the principles; the Economic Community of West African States (ECOWAS) called on its Member States to disseminate and apply them; and in the Horn of Africa, the Intergovernmental Authority on Development (IGAD), in a ministerial declaration, called the

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<sup>15</sup> Para 3, p. 2. DOC.AALCC\XXXIV\DOHA\95\3, 1995.

<sup>16</sup> UN General Assembly GA Resolution A/60/L.1 para. 132.

<sup>17</sup> (A/RES/62/153, para. 10).

principles a “useful tool” in the development of national policies on internal displacement. In Europe, the Organization for Security and Cooperation in Europe (OSCE) recognized the principles as “a useful framework for the work of the OSCE” in dealing with internal displacement, and the Parliamentary Assembly of the Council of Europe as well as its Council of Ministers urged its Member States to incorporate the principles into their domestic laws. The number of states that have incorporated the Guiding Principles into their domestic laws and policies is growing.

The Guiding Principles reflect and are consistent with international human rights law and international humanitarian law and largely codify and make explicit guarantees protecting internally displaced people that are inherent in these bodies of law. The 10th anniversary of the Guiding Principles provided a fitting occasion to publish a second edition of the Annotations. It follows very closely the structure and content of the first edition but reflects the significant legal developments that have taken place since the publication of the Annotations in 2000.<sup>18</sup>

A key notion affirmed in the Guiding Principles is that States have the primary responsibility to prevent displacement, to protect and assist IDPs under their jurisdiction, and to provide durable solution to their situation. In order to fulfil this responsibility, States need to have in place domestic normative and policy frameworks, with the necessary implementing structures and processes, so that they can respond effectively to the specific needs and vulnerabilities of IDPs.<sup>19</sup>

The Guiding Principles bring together and give an overview of the rights of IDPs and the responsibility of national authorities and non-State actors towards them. To a large extent, much as the Guiding Principles are not a binding document like a treaty, they are based on and reflect existing standards of international law, which are binding.

The Guiding Principles provide a definition of an IDP, and a comprehensive statement of what protection should mean during internal displacement. It covers all phases of displacement:

- a) Pre-displacement phase, providing protection from unlawful displacement;
- b) Protection and assistance during displacement;
- c) Durable solutions, namely return and local integration at the place of displacement, or re-settlement in another part of the country and re-integration.<sup>20</sup>

These principles address a range of particular needs and protection risks that typically arise in situations of internal displacement, such as loss of documentation and property. They also identify the corresponding rights and guarantees to address these concerns, which includes civil and political rights, as well as economic, social and cultural rights, especially those not typically existent at the forefront of humanitarian action, such as:

- a) Physical security and integrity (such as right to life, protection from torture and rape);
- b) Basic necessities of life (such as right to food, shelter and sanitation);

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<sup>18</sup> Walter Kalin, ‘Guiding Principles on Internal Displacement: Annotations’, *ASIL* 2008

<sup>19</sup> ‘Internally Displaced Persons and International Humanitarian Law’, ICRC Advisory Service on International Humanitarian Law, (2017), 2.

<sup>20</sup> UNHCR Handbook for the Protection of Internally Displaced Persons (March, 2010).

- c) Other economic, social and cultural needs (such as access to education, property restitution or compensation); and
- d) Other civil and political protection issues (such as right to personal documentation, and political participation).<sup>21</sup>

Therefore, the Guiding Principles are more than a simple compilation and re-statement of legal rules. They provide a comprehensive framework for identifying protection concerns and for planning, implementing and monitoring protection activities in situations of internal displacement. They can be used by governments, international agencies and NGOs to promote and protect the rights of IDPs.

The UN Guiding Principles, however, do not attempt to explicitly address the gaps in the legal protection of IDPs, but they do restate the existing international norms related to them and attempt to provide governments and international organizations with guidance on how to respond to the needs of IDPs. Reality demonstrates that international law has not succeeded in preventing internal displacement. This fact results from the incomplete nature of this protection machinery, in particular the deficiencies of the international legal system as regards the implementation and enforcement of states' obligations under international law. As individuals who have not left their own country, IDPs remain entitled to the full range of human rights that are applicable to the citizens of that country.

The challenge, however, is to identify those guarantees and concepts in existing international law that could relate to the special needs of IDPs and which may provide some protection for IDPs in particular situations. Many human rights, however, may be derogated in times of national emergencies. In addition, governments which create situations resulting in internal displacement, or which are not sympathetic to the plight of those displaced for ethnic, religious, or political reasons, are generally unwilling to provide displaced people with the rights found in international human rights instruments.

## **VI AALCO and Special Protection for Internally Displaced People**

It is clear to the international community that the present international response to the IDPs situation is not adequate. In the absence of a clear mandate and an international body with special responsibility for the protection of internally displaced, the international response to the IDP problem has been ad hoc.

Since the UN established protected areas or safe zones in times of armed conflicts, such as in 1992 Cambodia (UN Protected area), 1992 Bosnia & Herzegovina (Safe Area), 1994 Rwanda (Protected Zone), or Somalia, the AALCC's study on the question has concentrated on the legal concept of a Safety Zone for IDPs in armed conflicts and to formulate basic principles. The topic "The Establishment of Safety Zones for the displaced persons in their country of origin" was taken up for the first time in 1985 at the suggestion of Member State of Thailand that felt that this would lessen the burden imposed upon the international community under the broader principle of "Burden Sharing". The proposal emanated out of the experience of a

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<sup>21</sup> Ibid.

developing country faced with massive refugee flows that felt that this would reduce the burden on individual States that are faced with such challenging situations.

This proposal was accordingly discussed between the Member States, and in the year 1989, at the Twenty Eighth Session of the organization held in Nairobi, Kenya, the Secretariat presented 13 principles, which provided a framework for the establishment of Safety Zones for IDPs.

As per these principles, these Safety Zones that were supposed to be of temporary nature would be established with the consent of the State of Origin, through a resolution, or the recommendation of the UN. This zone would be akin to a demilitarized zone or a neutral zone, immune from hostile activities. It should further be under international supervision, control and management to provide international protection to the persons residing therein. Notably, the principles also provide that individuals within a Safety Zone shall be provided with the facility to seek and enjoy asylum in any other country, and on normalization being restored in the country of origin, the persons residing in such zones shall be provided with all facilities to return to their permanent place of residence.

These principles, therefore, address the two main concerns of the international community when it comes to establishment of safety zones for the internally displaced.

The first being that such zones may be against the concept of sovereignty under international law. The principles clearly provide that such zones would be established only with the clear consent of the country of origin. However, in most situations of internal conflicts, there may be no such strong government in power that may be in a position to issue such a consent. That is, in situations where the government does not exist, the question of sovereignty has no easy answers.

Secondly, the principles address another concern that such safety zones may contradict the principle of international law of ‘non-refoulment’, as governments may be tempted to send back the fleeing persons to their countries of origin, where they may not be secure.

These principles are an alternative to the international refugee law principles of seeking and obtaining asylum in other countries, and not a substitute for the same. The principles clearly provide that the ‘individuals within a Safety Zone shall be provided with the facility to seek and enjoy asylum in any other country’.

It is further important to note that this initiative of AALCO of establishing safety zones is meant to be used as a temporary and partial solution to tackle this problem. Furthermore, it is a matter of simple reasoning that it would be easier and more effective to protect displaced persons in their country rather than overseas.<sup>22</sup>

In 1995, the AALCO Secretariat in cooperation with the UNHCR formulated a “Framework for the Establishment of a Safety Zone for Displaced Persons in their Country of Origin”.<sup>23</sup> It incorporated basic principles enshrined in international humanitarian law and decisions of

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<sup>22</sup> For more elaborate discussions by AALCO Member States on this issue, see, ‘Summary Record of the Seminar on the “Establishment of a Safety Zone for Displaced Persons in their Country of Origin” Held in New Delhi on 23 September 1994’ in ‘Establishment of Safety Zones for the Displaced Persons in their Country of Origin’, DOC.AALCC\XXXIV\DOHA\95\3, 1995.

<sup>23</sup> See DOC.AALCC\XXXIV\DOHA\95\3, 1995, 6.

various International Organizations. It adopted a simple uncomplicated structure to outline a solution to a complex issue. It comprises of various provisions arranged under 7 broad headings (see Annex A). The 7 broad headings of the framework are as follows:

a) the aim of establishing a Safety Zone; b) conditions of the establishment; c) supervision and management; d) duties of the government (of the country of origin) and the conflicting parties concerned; e) rights and duties of the displaced persons in a safety zone; f) protection of the officials of the International Organizations who manage the safety zones; and g) closure of the safety zone.

The aim of establishing a Safety Zone is both to protect the life and property of displaced persons in their country of origin by placing them under a UN protected area, and to further prevent the exodus of refugees to neighbouring countries, thus fulfilling the obligations of burden-sharing. It covers international and non-international armed conflicts as well as internal conflicts involving the use of force.

The Safety Zone shall be established by the decision of the UN Security Council, with the consent of the government concerned and that of the parties to the conflict, through the signing of an agreement between the UN and the government or amongst UN and the conflicting parties, in case of a lack of a unified government – in order to secure a specified geographical area for the Safety Zone – and to make sure that the territorial sovereignty of the State concerned is not violated. Needless to say that the area should be de-militarized and be immune from hostile activities.<sup>24</sup>

Such a Safety Zone shall be placed under an International Organization designated by the UN Security Council, which shall be responsible for all necessities and requirements of the displaced people. The government of the State and the conflicting parties should have duties to cooperate with the designated International Organization concerned.<sup>25</sup>

The rights and duties of the displaced persons in such a Safety Zone should be as practicable as possible in accordance with those that are applied to the State's national. Further, the safety and security of the officials of the designated International Organization should be guaranteed by the government of the State and the conflicting parties.

Lastly, the Safety Zone is ought to be of a temporary nature, and should be closed when the situation so arises that all the displaced people can return to their places of residence or safely re-integrated, with the decision of the Security Council.<sup>26</sup>

The idea of Safety Zones, however, is not a novel concept as such, and finds its origins in International Humanitarian Law. Article 23 of the First Geneva Convention (Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field, 1949) envisages the creation of hospital zones and localities for the sick and wounded in the armed forces. This provision is extended to the civilian sick and wounded by Article 14 of the Fourth Geneva Convention (Geneva Convention relating to the Protection of the Civilian Persons in Time of War, 1949). Article 15 of the Fourth Geneva Convention allows for the creation of neutralized zones which would be open to all civilians whether wounded or not.

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<sup>24</sup> Proposed Legal Framework for the Establishment of a Safety Zone for Displaced Persons in their Country of Origin, 1995.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

Additional Protocol I (Additional Protocol of 1977 to 1949 Geneva Convention Relating to Protection of Victims of International Armed Conflicts) also contains provisions of non-defended localities (Article 59) and de-militarized zones (Article 60).

These provisions, however, have rarely been used in practice, and safe areas created at many places such as Iraq (1991), Bosnia and Herzegovina (1993), or Rwanda (1994), even though inspired by the provisions of International Humanitarian Law, were different from those envisaged under the Conventions.

The main difference being that safe areas were often established without the consent of warring parties. Moreover, they were not properly de-militarized as envisaged under Articles 59 and 60 of Additional Protocol I. Quite often they lacked legitimacy.

The experience of the 90s raised a number of questions, therefore, on the viability of Safety Zones.<sup>27</sup> While on the other hand, Open Relief Centres (ORCs) established in Sri Lanka in 1990 can be said to be closer to model envisaged by IHL, and were relatively successful in providing both assistance and protection to the internally displaced. They benefitted from the implicit and later explicit consent of the parties to the conflict, and retained a civilian character.

## **VII Concluding Remarks**

Over the years, while the Guiding Principles on Internal Displacement have demonstrated their utility and impact, they have also been reflective of the inherent limitations. In many parts of the world the issue of internal displacement essentially remains an “internal affair”, creating impediments to the taking of any concrete remedial action in these regions.

In the last decades, IDPs have suffered from extreme destitution and have been vulnerable to all kinds of human rights abuse. Yet, they received little or no protection from their governments, which often did not have the capacity or the willingness to provide for their wellbeing and security, or from the international community.

Because IDPs did not cross an internationally recognized state border, the 1951 Refugee Convention relating to the Status of Refugees did not apply to them, and the UN High Commissioner for Refugees (UNHCR) had no automatic mandate to assist them.

To be sure, the ICRC has long been involved in protecting civilians in armed conflict, but the magnitude of the IDP problem was beyond its scope, different phases of displacement beyond its mandate, and its access often limited.

The Guiding Principles on the other hand, in spite of being non-binding, have acquired a “legal significance” today. They are used not just by organizations such as the UNHCR as one of their day-to-day legal tools, but have also been adopted by a large number of governments into their national laws.

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<sup>27</sup> For a more detailed account on this, see, Anuradha Bakshi, ‘Ten Years of the Adoption of the Guiding Principles on Internal Displacement: Have they made a Significant Difference to the Lives of the Internally Displaced Persons?’ Essays on Contemporary Issues in International Law, Centre for Research and Training AALCO (2009).

However, since the Guiding Principles are not a treaty, they come with no monitoring or enforcement machinery. A global effort is therefore needed to oversee compliance with their provisions, requiring the participation of governments, local authorities, regional bodies, UN agencies, international and national NGOs, organizations representing the displaced, and the displaced themselves. Nevertheless, such an effort is not always consistent, vigorous or well supported.<sup>28</sup>

Another limitation is the non-binding status of the Principles, which can make it easier to dismiss them. Sometimes governments have little awareness of the provisions in the Guiding Principles or of the need to apply them, or there is resistance to apply them because they are non-binding.

The idea of Safe Zones under AALCO as a legal concept is yet to be fully developed, and will require further international cooperation. However, and in spite of having been drafted well over 2 decades ago, the “Legal Framework” established under AALCO may be termed as a modern-day tool for bringing a proper resolution to the present day IDP situation.

During the past decades, the entire regions of Asia and Africa have witnessed numerous IDPs situations that accounts for the growing concern in these regions for the well-being of those who are forced to leave their homeland. Whilst in many of these cases some people become refugees by crossing in other countries, majority remained IDPs.

Others where people have left their homes in either isolated or disorganized groups only to fail to reach their destinations by undertaking perilous journeys and meeting an unfortunate fate, or even to be pushed back.

Given the increase in armed and violent conflicts globally, it is, therefore, increasingly a matter of great concern for the international community, whether the application of the refugee law, humanitarian law and human rights law alone, can resolve this growing problem of IDPs.

The concept of “Safe Zones for Internally Displaced Persons” can not only resolve the problem of an unequal burden sharing by strategically located States, but also provide a determined solution to those people displaced from their homes due to harsh conditions but could not or chose not to cross the international borders.

If the State of origin, particularly where displacement of people is a constant or recurrent phenomenon, can be called upon to designate a particular geographical area as a “Safety Zone”, besides providing a temporary protection to the displaced, it may also help in the orderly movement of people intending to leave. Such an orderly movement could also help the neighbouring States to plan the reception of the refugees from IDPs in a way that may be conducive also to the well-being of the receiving State.

In conclusion, it must be stated that, AALCO is, however, not unaware of the practical difficulties that may arise with the designation and creation of such “Safety Zones”, and concedes to the fact that presently the status of the concept as it remains may not be full proof to all IDPs problems.

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<sup>28</sup> Roberta Cohen, ‘Lessons Learned from the Development of the Guiding Principles on Internal Displacement’, The Crisis Migration Project (2013).

Some Member States of AALCO raised legitimate doubts such as whether such zones if created would contradict the principle of “non-refoulement”, as governments would be tempted to send back the fleeing persons, or even not accepting them in their territories at all.

Other have raised the issue whether such the concept of such zones challenges the international law of sovereignty and threatens the territorial integrity of the country of origin in question? Or whether or not in situations where a State refuses or fails to create a Safety Zone or even undertake the responsibility of protecting its own people, would the State concerned be deemed to have violated Article 3 of the UDHR, and whether consequently the UN could on its own establish a Safety Zone? Further, by creating a Safety Zone whether the movement of persons shall be restricted, denying them the basic human rights under the UDHR, or would it amount to even lessening the rights of those who are not inside such safety zones?<sup>29</sup>

However, it needs to be noted that, quite often, no government is likely to acknowledge the existence of a situation that points to its own failure to protect its citizens. Also, the experience has shown that during civil wars, especially where the government becomes involved with one of the warring factions, consent for humanitarian intervention had normally been delayed for purposes of political or military scores.<sup>30</sup> Another important consideration to be borne in mind is that any person who chooses to leave his home to escape the regressive acts of the government is likely to seek refuge, even temporarily, in a Safety Zone, unless it is clearly under the control and management of authorities unconnected with the government. This again reinforces the questions over the relation between Safety Zones and State sovereignty.

To search for clear and conclusive answers to these questions, the concept of “Safety Zones” needs to be discussed in further details within the international community, and for that the basic idea of creating “Safety Zones” for IDPs first and foremost needs to be accepted and appreciated within legal concepts of contemporary international law.

There are some more well-established principles to be found in the existing IHL-related instruments, including the Geneva Convention on the Protection of Civilian Persons in the Time of War 1949 and its Additional Protocols, which could perhaps be drawn upon to meet the above requirements. Once the concept of Safety Zones for IDPs is found acceptable to the international community, it can be treated as a progressive extension of IHL.

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<sup>29</sup> See, AALCO Doc. DOC.AALCC/XXVII/3, and DOC. AALCC\XXXIV\DOHA\95\3.

<sup>30</sup> Para 8, p. 20.

## **ANNEX A: PROPOSED LEGAL FRAMEWORK FOR THE ESTABLISHMENT OF A SAFETY ZONE FOR DISPLACED PERSONS IN THEIR COUNTRY OF ORIGIN, 1995.**

### **1. The aim of establishing a Safety Zone**

1. To protect the life and property of displaced persons in their country of origin from consequences of armed conflicts, by placing them under a U.N. protection area.
2. To prevent the exodus of refugees to neighboring countries.
3. To realize the principle of “burden sharing” in the assistance of displaced person.
4. To develop the idea of the Geneva Conventions for Protection of War Victims (1949) and the Protocol (1977)

### **2. Conditions**

1. The Safety Zone shall be established when a considerable number of displaced persons arise as a result of armed conflicts or civil wars, and their life and property are threatened as the consequences.
2. The Safety Zone shall be established by the decision of the Security Council of the United Nations with the consent of the Government concerned and of the parties to the conflicts.
3. An agreement should be signed between the U.N. and the Government concerned or among the U.N. and conflicting parties, in case of the lack of the unified government, to secure a specified geographical area for the Safety Zone.
4. The area should be demilitarized and be immune from hostile activities. The armed forces of the state and the conflicting parties should be withdrawn from the area.
5. The establishment of the Safety Zone should not violate the sovereignty of the state concerned. It should not threaten the territorial integrity of the State.

### **3. The supervision and the management**

1. The Safety Zone should be placed under the supervision of the U.N.
2. The Security Council will designate an international organization to manage the Safety Zone.
3. An UN designate international organization should be responsible for the supply of the shelter, food medical care and other essential items of basic civic amenities for the displaced persons. It will cooperate with other international organizations and member states for the implementation of its work.
4. The U.N. may provide a multinational security forces, if necessary and practicable, for the protection of the displaced persons in the Safety Zone.
5. The cost of the maintenance of the Safety Zone should be met by voluntary contributions of:
  - a) The Member States to the U.N.

- b) The U.N. Agencies
- c) The Inter-governmental and Non-governmental Organizations.

#### **4. Duties of the Government and the conflicting parties concerned**

1. The Government of the State and the conflicting parties should have duties to cooperate with the International Organization to establish and to manage Safety Zone.
2. The life and property of the displaced persons should be guaranteed and be strictly protected by the Government and of conflicting parties concerned.

#### **5. Rights and Duties of the Displaced Persons**

1. The rights of the displaced persons for receiving fair and just treatments by the officials who supervise and manage the Safety Zone should be respected.
2. The rights and duties of the displaced persons in the Safety Zone should, as practicable as possible, be in accordance with those which are applied to the national in the state.

#### **6. Protection of the officials of the International Organizations**

The Safety and Security of the officials of the International Organizations engaged in supervising and managing the Safety Zone should be guaranteed by both the Government of the State and the conflicting parties.

#### **7. Closure of the Safety Zone**

The establishment of a Safety Zone should be of temporary nature and should be closed down by the decision of the Security Council. In the case of the closure all the displaced persons should be returned safely to their permanent places of residence.